

DLD-244

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-1458

EDWIN RANDALL,

Appellant

v.

R. MARTINEZ, WARDEN

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 07-cv-02151)
District Judge: Honorable John E. Jones, III

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
June 26, 2008

Before: BARRY, CHAGARES and NYGAARD, Circuit Judges

(Opinion filed July 15, 2008)

OPINION

PER CURIAM

Edwin Randall appeals the District Court's order dismissing his petition for a writ of habeas corpus. The Government has filed a motion for summary affirmance. Because

Randall's appeal does not present a substantial question, we will grant the Government's motion and summarily affirm the judgment of the District Court. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

In a petition submitted pursuant to 28 U.S.C. § 2241, Randall alleged that prison disciplinary proceedings violated his due process rights. When he filed his petition in November 2007, the prison had imposed sanctions including transfer to a higher-security facility,¹ loss of 40 days' good conduct time, and temporary revocation of certain privileges. However, by the time the Government filed its response in January 2008, for reasons not clear from the record, the warden directed expungement of the incident report and restoration of Randall's good conduct time and other privileges. Consequently, the Government argued that Randall's petition was moot. In support, the Government submitted the declaration of L. Cunningham, supervisory attorney for the Allenwood facility, which stated that prison staff had "confirmed they had generated the documentation necessary to restore inmate Randall's Good Conduct Time as well as the privileges which were affected by this incident report."

The District Court accepted the Government's argument and dismissed the petition as moot by order entered January 30, 2008. In doing so, the District Court failed to consider Randall's traverse, which was entered on the docket that same day. Randall

¹ Randall was transferred from the minimum security facility in Bennettsville, South Carolina, to the Allenwood low security facility in White Deer, Pennsylvania.

therefore filed a motion for reconsideration pursuant to Federal Rule of Procedure 59(e) requesting the District Court to consider his traverse, which raised arguments opposing the Government's mootness argument. Specifically, although he conceded that expungement provided partial relief, he argued that the controversy remained live because the prison failed to remove two sanctions: the transfer to the higher-security facility and the deduction of 40 days' good conduct time. Although it found his Rule 59(e) motion untimely, the District Court addressed Randall's motion on its merits, granted it only for the limited purpose of considering the traverse, and denied it in all other respects.²

We review the District Court's denial of habeas corpus relief de novo, Reinert v. Larkins, 379 F.3d 76, 83 n.2 (3d Cir. 2004), and its factual findings for clear error. See, e.g., Ruggiano v. Reish, 307 F.3d 121, 126 (3d Cir. 2002). As Randall concedes, his petition is moot to the extent it sought expungement of the disciplinary charges because he has received that relief. In addition, a habeas corpus petition is not the proper vehicle for Randall's challenge to his disciplinary transfer to a higher-security facility. His claim does not present a challenge to the fact or length of his conviction, see Leamer v. Fauver, 288 F.3d 532, 542 (3d Cir. 2002), or challenge the manner of its execution. Cf. Woodall v. Fed. Bureau of Prisons, 432 F.3d 235, 243 (3d Cir. 2005) (indicating that while certain types of transfers may give rise to habeas claims, "a garden variety prison transfer" would

² Randall did not separately appeal the District Court's decision on the Rule 59(e) motion. See Fed. R. App. P. 4(a)(4)(B)(ii). We therefore reference the District Court's Rule 59(e) order for informational purposes only.

not). We therefore focus on Randall's claim concerning the prison's alleged failure to restore his 40 days' good conduct time.

This claim presents a challenge to the length of Randall's confinement and is therefore cognizable in a petition for habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 487 (1973). However, Randall's evidence that the prison failed to restore his good conduct time³ failed to refute the Government's evidence that the prison generated the paperwork necessary to restore the good conduct time.⁴ Indeed, because all parties agree that Randall is entitled to and will be credited for the 40 days' good conduct time, we surmise that to the extent that any "controversy" remains, it appears to be attributable to some sort of administrative delay in updating Randall's records.⁵

Accordingly, Randall's appeal does not present a substantial question. We therefore grant the Government's motion and summarily affirm the judgment of the

³ In support of his Rule 59(e) motion, Randall presented what appears to be a computer-generated report entitled "Sentence Monitoring Computation Data as of 1-22-2008" containing the phrase "COMP UPDATED BY DSCC TO REFLECT DIS-40 DAYS." The District Court found that "[t]he meaning of this phrase is not clear from the face of the document."

⁴ Randall's argument that the good conduct time had not yet been credited to him is not necessarily inconsistent with the Government's position that the paperwork had been completed so he will eventually be credited with the good conduct time. The Government did not submit evidence demonstrating that the good conduct time had yet been actually restored.

⁵ In support of his appeal, Randall has submitted what appears to be an updated computer report dated March 13, 2008, which reflects the notation "COMP UPDATED BY DSCC TO REFLECT DIS-40 DAYS." Without further explanation, we, like the District Court, cannot be confident of the meaning of this phrase.

District Court dismissing the petition. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6. We are confident that, if they have not already done so, prison officials will ensure that the relevant records are corrected to reflect an accurate computation of Randall's sentence. Nevertheless, we make clear that our disposition is without prejudice to Randall pursuing an appropriate habeas corpus petition in the District Court if, for some reason, the issue has not been addressed within 180 days of the date of this opinion.